



Joint Guidance on Federal Title IX Regulations:¹ Summary Analysis of Sections § 106.9, § 106.18, § 106.24, § 106.46, § 106.62, § 106.72: Severability²

May 22, 2020

In the Final Rule, unlike in the Proposed Rule, the Department has added “severability” language as new sections 106.9, 106.18, 106.24, 106.46, 106.62, and 106.72.

The language states that if any provision of the regulations or its application in a given circumstance is held invalid, the remainder of the regulations shall not be affected. As such, the Department’s intent is that if one portion of the regulation were invalidated by a court or otherwise, the rest of the regulation would remain in effect.

These severability clauses apply to both new provisions of the regulations in the Final Rule as well as those that were not otherwise amended by the Final (or Proposed) Rule, such as provisions relating to discrimination on the basis of sex in admission and recruitment. *See* Final Rule §106.24.

The Department’s stated rationale for these provisions is “to make clear that these final regulations are designed to operate independently of each other and to convey the Department’s intent that the potential invalidity of one provision should not affect the remainder of the provisions.” *See* 85 Fed. Reg. 30538 (May 19, 2020).

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² This document focuses on a summary analysis of the 2020 Final Title IX Regulations’ sections focused on severability. For a full overview of the changes from the Proposed Regulations, see *Title IX Text for Text Proposed to Final Comparison* and *Title IX Summary Proposed to Final Comparison*, available at system.suny.edu/sci/tix2020